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on the first sale was inadvisable on the question as to whether the sale had been properly advertised, where the similarity of conditions at the two sales did not appear.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 399-402; Dec. Dig. § 131.* 13 Va.-W. Va. Enc. Dig. 552.]

10. Appeal and Error (§ 1059*)—Harmless Error—Exclusion of Evidence.—Error, of any, in the exclusion of such evidence, was not prejudicial to the vendor, where the court at his request properly instructed that the only question as to the sufficiency of the advertisement was his good faith in selecting the method of advertisement.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. § 4208; Dec. Dig. § 1059.* 1 Va.-W. Va. Enc. Dig. 595; 14 Va.-W. Va. Enc. Dig. 94; 15 Va.-W. Va. Enc. Dig. 69.]

11. Vendor and Purchaser (§ 330*)—Vendor's Action for Breach—Liability.—Under a contract whereby, in consideration of the extension of a contract for the sale and purchase of land, the purchaser undertook to purchase by a certain day or to pay the vendor the difference between the purchase price and the proceeds of the land at public sale, the purchaser, who did not exercise his option to purchase by an offer in good faith to perform his contract, and was not prevented from doing so by any act or default of the vendor, after advertisement and sale of the property at public sale for less than the contract price, was liable for the difference.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 953-956; Dec. Dig. § 330.* 13 Va.-W. Va. Enc. Dig. 543; 14 Va.-W. Va. Enc. Dig. 1057; 15 Va.-W. Va. Enc. Dig. 1045.]

Error to Circuit Court, Botetourt County.

Action by W. P. Mundy and others, executors of the estate of James Mundy, deceased, against J. L. Garland and wife. Judgment for defendants, and plaintiffs bring error. Reversed, and remanded for new trial.

Hall & Woods, of Roanoke, and *C. M. Lunsford* and *E. V. Barley*, both of Fincastle, for plaintiffs in error.

Benjamin Haden, of Fincastle, for defendants in error.

POCAHONTAS CONSOL. COLLIERIES CO., Inc., v. HAIRSTON.

Jan 12, 1915.

[83 S. E. 1041.]

1. Trial (§ 232*)—Instructions—Direction of Verdict.—An instruction which directs a verdict on a finding of certain facts must embrace all the elements necessary to support the verdict.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 524, 525; Dec.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Dig. § 232.* 13 Va.-W. Va. Enc. Dig. 627; 14 Va.-W. Va. Enc. Dig. 1067; 15 Va.-W. Va. Enc. Dig. 1055.]

2. Master and Servant (§ 235*)—Injuries to Servant—Duty to Inspect—Delegation.—While a master cannot delegate to a servant the duty to inspect a machine so as to relieve himself from liability for injuries to another servant, it may impose that duty by general rule upon the servants using the machine, so far as they are competent, and thereby relieve himself of liability for injuries to them occasioned by their own failure to inspect.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 710-722; Dec. Dig. § 235.* 9 Va.-W. Va. Enc. Dig. 683; 14-W. Va. Enc. Dig. 687; 15 Va.-W. Va. Enc. Dig. 649.]

3. Master and Servant (§ 296*)—Injuries to Servant—Instructions—Duty to Inspect.—An instruction, in an action for injuries to a servant, caused by a defect in a machine which he was required to inspect, which instruction directed a verdict for plaintiff upon certain findings, and, among other things, stated that the duty to inspect was one which the master could not delegate to another, and that plaintiff must be without negligence on his part, was misleading, even if the requirement that the plaintiff be without negligence can be construed as a requirement that he should have made the inspection which he was required by the rules to make.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1180-1194; Dec. Dig. § 296.* 9 Va.-W. Va. Enc. Dig. 683; 14 Va.-W. Va. Enc. Dig. 687; 15 Va.-W. Va. Enc. Dig. 649.]

4. Master and Servant (§ 296*)—Injuries to Servant—Instructions—Duty to Inspect.—An instruction that the master's rule required plaintiff to make a careful inspection of the machine before he used it, and to be vigilant and watchful and use all ordinary and reasonable care to avoid accidents to himself, sufficiently submits the plaintiff's duty under a rule requiring him to be vigilant and watchful to the full extent of his ability, with a view to avoiding accidents to himself or injuries to other persons or property.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 1180-1194; Dec. Dig. § 296.* 9 Va.-W. Va. Enc. Dig. 683; 14 Va.-W. Va. Enc. Dig. 687; 15 Va.-W. Va. Enc. Dig. 649.]

5. Trial (§ 296*)—Error in Instructions—Cure by Other Instructions.—An instruction conditionally directing a verdict for plaintiff, which was erroneous in not requiring a finding that the injured servant made an inspection of the machinery required by him under the rules, is not cured by a subsequent correct instruction upon that issue, since the two are irreconcilable, and it cannot be told which one was followed by the jury.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 705-713, 715,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

716, 718; Dec. Dig. § 296.* 7 Va.-W. Va. Enc. Dig. 744; 14 Va.-W. Va. Enc. Dig. 566; 15 Va.-W. Va. Enc. Dig. 522.]

6. Trial (§ 242*)—Instructions—Misleading Instructions.—Instructions which are obscure or ambiguous, or for any reason confusing or misleading, should not be given.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 569-576; Dec. Dig. § 242.* 7 Va.-W. Va. Enc. Dig. 727; 14 Va.-W. Va. Enc. Dig. 564; 15 Va.-W. Va. Enc. Dig. 516.]

7. Trial (§ 295*)—Instructions—Cure by Other Instructions.—Instructions must be read as a whole, and defects in one may be cured by another, where, taken as a whole, they could not have misled.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 703-717; Dec. Dig. § 295.* 7 Va.-W. Va. Enc. Dig. 744; 14 Va.-W. Va. Enc. Dig. 566; 15 Va.-W. Va. Enc. Dig. 522.]

Error to Circuit Court, Tazewell County.

Action by Manuel Hairston against the Pocahontas Consolidated Collieries Company, Incorporated. Judgment for plaintiff, and defendant brings error. Reversed and new trial awarded.

Henry & Graham & Hawthorne, of Tazewell, for plaintiff in error.

Wm. H. Werth, of Tazewell, and *Haiston & Willis*, of Roanoke, for defendant in error.

WISEMAN v. COMMONWEALTH.

Jan. 12, 1915.

[83 S. E. 1052.]

1. Intoxicating Liquors (§ 200*)—Soliciting Orders in Dry Territory—Indictment—Sufficiency.—An indictment charging that accused in no-license territory acted as agent for the sale and transmission of an order for intoxicating liquors given to him by a third person, and that accused had no license, does not state an offense under Acts 1910, c. 190, § 33, providing that no person shall in any no-license territory solicit orders for liquor or act as agent for the sale and transmission of orders, whether the statute be construed as not forbidding the sale and transmission of unsolicited orders, or whether it be construed to create two offenses; one the soliciting of orders for liquor in no-license territory; and the other the acting as agent for the sale of liquor and the transmission of orders therefor.

[Ed. Note.—For other cases, see Intoxicating Liquors, Cent. Dig.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.